

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

QUADIR ARMSTRONG,

Plaintiff,

v.

**UNION COUNTY DEPARTMENT OF
CORRECTIONS et al,**

Defendants.

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Civil Action No. 16-7082 (JMV)

OPINION AND ORDER

THIS MATTER comes before the Court on a Motion by *pro se* Plaintiff Quadir Armstrong for the appointment of *pro bono* counsel pursuant to 28 U.S.C. § 1915(e). [Dkt. No. 2]. Plaintiff’s Motion is unopposed. For the reasons set forth below, Plaintiff’s Motion for the appointment of *pro bono* counsel is **DENIED**.

Plaintiff filed his Complaint on October 11, 2016 alleging violations of his constitutional rights pursuant to 42 U.S.C. § 1983. Specifically, Plaintiff—who suffers from paralysis of both legs and incontinence—claims that Defendants Union County and the Union County Department of Corrections failed to accommodate his disability and medical needs. Notably, Plaintiff claims that he was regularly left in soiled clothes, sustained sores from neglect, was forced to stay in beds incompatible with his conditions, and deprived of medical attention. [Dkt. No. 1]. On October 11, 2016, Plaintiff filed an application to proceed *in forma pauperis*, which the Court denied on January 6, 2017. [Dkt. No. 6]. The instant application for *pro bono* counsel was filed on December 12, 2016.

Plaintiff seeks the appointment of counsel under 28 U.S.C. § 1915(e), which provides that “[t]he court may request an attorney to represent any person unable to afford counsel.” The appointment of counsel is a privilege, not a statutory or constitutional right. *Brightwell v.*

Lehman, 637 F.3d 187, 192 (3d Cir. 2011). The decision to appoint pro bono counsel involves a two-step analysis. First, a court must determine, as a threshold matter, whether a plaintiff's claim has "some merit in fact and law." *Tabron v. Grace*, 6 F.3d 147, 155 (3d Cir. 1993). If a court finds that the action arguably has merit, it should then consider the following factors:

- (1) the plaintiff's ability to present his or her own case;
- (2) the complexity of the legal issues;
- (3) the degree to which factual investigation will be necessary and the ability of the plaintiff to pursue such investigations;
- (4) the amount a case is likely to turn on credibility determinations;
- (5) whether the case will require the testimony of expert witnesses;
- (6) whether the plaintiff can attain and afford counsel on his own behalf.

Parham v. Johnson, 126 F.3d 454, 457 (3d Cir. 1997) (citing *Tabron*, 6 F.3d at 155-56, 157 n.5). This list is not exhaustive, but rather provides guideposts for the Court. *Montgomery v. Pinchak*, 294 F.3d 492, 499 (3d Cir. 2002) (additional citations omitted). A court's decision to appoint counsel "must be made on a case-by-case basis." *Tabron*, 6 F.3d at 157-58. Additionally, the Third Circuit has stated that "courts should exercise care in appointing counsel because volunteer lawyer time is a precious commodity and should not be wasted on frivolous cases." *Montgomery*, 294 F.3d 499 (citing *Parham*, 126 F.3d at 458).

Presently, as an initial matter and regardless of whether or not Plaintiff's claims have merit, the factual and legal issues "have not been tested or developed by the general course of litigation, making [a number of factors] of *Parham*'s test particularly difficult to evaluate." See *Chatterjee v. Philadelphia Federation of Teachers*, 2000 WL 1022979 at *1 (E.D.Pa. July 18, 2000) (stating that unlike *Parham*, which concerned a directed verdict ruling, and *Tabron*, which involved summary judgment adjudication, plaintiff's claims asserted in the complaint and

motions “have barely been articulated” and have a distinctive procedural posture). With respect to the *Tabron* factors, Plaintiff has not demonstrated at this stage of the proceeding that *pro bono* counsel is warranted.

Plaintiff’s filings with the Court thus far reflect literacy and the ability to reference relevant legal authority. For example, without the assistance of counsel, Plaintiff has filed a Complaint, an application for *in forma pauperis* status, and the present motion for the appointment of *pro bono* counsel. These filing themselves demonstrate that Plaintiff is able to present his case. Plaintiff argues that *pro bono* counsel is necessary because he is in a wheelchair and is not allowed to go to the law library. He further argues that the Union County Department of Corrections will hinder his research because he brought this case against it. While the Court does not take these claims lightly, Plaintiff has provided no further support for these allegations. As such, the first *Tabron* factor weighs against Plaintiff.

Moreover, the legal issues presented are not complex, and at this stage the degree to which factual investigations will be necessary, the extent to which the case is likely to turn on credibility determinations, and whether Plaintiff will require expert witnesses is unclear. The Court acknowledges that Plaintiff is of limited financial means and unable to afford his own counsel. While the sixth *Tabron* factor weights slightly in Plaintiff’s favor, this fact alone is not enough to justify the appointment of counsel. *See Christy v. Robinson*, 216 F. Supp. 2d 398, 410 (D.N.J. 2002) (denying application for pro bono counsel where indigency was the only one of the six factors . . . weigh[ing] in favor of appointment of counsel).

The Court recognizes that issues may arise throughout the course of this litigation which may raise a question as to Plaintiff’s need for counsel. The Court will monitor the considerations raised by Plaintiff’s Motion throughout case management and, as the case progresses, may

consider a renewed motion for the appointment of counsel. However, at this stage of the litigation, the Court finds that the *Tabron* factors weigh against appointment. In the event that Plaintiff renews his application for *pro bono* counsel in the future, the Court instructs Plaintiff to address the *Tabron* factors set forth above.

The Court having considered this matter pursuant to Fed. R. Civ. P. 78, and for good cause shown;

IT IS on this 14th day of June, 2017,

ORDERED that Plaintiff's Motion for the appointment of *pro bono* counsel [Dkt. No. 2] is **DENIED WITHOUT PREJUDICE**.

s/ James B. Clark, III
JAMES B. CLARK, III
United States Magistrate Judge